IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS, NORTHERN DIVISION THEREOF.

Reply Brief on Motion to Dismiss or Affirm or Advance the Cause.

May it please the court:

The authorities cited by appellants against the motion to dismiss all apply to statutes other than sections 763 and 764 of Revised Statutes, except *In re* Lennon, 150 U. S., 393, in which it is said *arguendo* that said sections were not necessarily repealed by the circuit court of appeals act; but it further ap-

pears from that opinion that the question of jurisdiction, upon which the appeal in that case depended, was not, in a proper sense of that word, involved, and accordingly that appeal was dismissed. Furthermore, it does not appear that Bucklin *vs.* United States, 159 U. S., 680, was cited to the court, neither was the court's attention called to the construction placed by the court in McLish *vs.* Roff, 141 U. S., 661, and Lau Ow Bew *vs.* United States, 144 U. S., 47, upon the circuit court of appeals act as dividing the *entire appellate jurisdiction* between the Supreme Court and the circuit court of appeals. It is apparent that if appeals may still be taken under section 763 of the Revised Statutes, the circuit court of appeals act of 1891 did not divide the entire appellate jurisdiction, but only part of it.

Furthermore, this appeal *can only* come here under said act of 1891, and therefore it must come here altogether under said act, and, as under the Bucklin case, *supra*, the proper method was to sue out a writ of error to the judgment below dismissing the writ of *habeas corpus*, an appeal cannot take the place of a writ of error, and the appeal should be dismissed.

II.

It is apparent from appellants' argument under point II that his grounds are those which might be available upon writ of error to the finding of the United States commissioner, but they are not available in an appeal from a judgment dismissing a writ of *habeas corpus*.

The evidence, not being brought to this court, it will be presumed, supported all the averments of the complaint, and appellants should not be heard in their argument to assert what was done at the trial in regard to the proof of the facts averred. The long list of cases, most of them upon what is necessary in indictments, cited to show that the complaint was not sufficient require no other answer than the reading of the complaint itself, taken in connection with the requirements of

such complaint as are set forth in the act of Congress upon extradition, and it is urged that if the complaint complies with that act it is sufficient, regardless of decisions of State or other courts upon questions arising under other laws.

The complaint (Rec., 32) is not upon information and belief as to all the crimes, as asserted by appellants (Brief, p. 19). The stealing of the stallion, road-cart, and harness and the breaking into the counting-house at Aurora, Canada, and stealing of money therefrom are positively averred. The kind of money stolen, some American, some Canadian, appears in the complaint (Rec., 33), although appellants' brief (p. 15) would leave you to infer the opposite.

The crimes respectively are distinctly averred (Rec., 32 and 33) with great particularity, and the complaint is not subject to the criticism made.

As to "shopbreaking" being an offense, the record (p. 43) shows that parts of the Canadian statutes were introduced in evidence, and as appellants have not brought up the evidence, it will be presumed that the evidence sustained the averments.

Again, "felony" need not be averred, as claimed, as it is sufficient to follow the act of Congress on the subject.

The adjournment for eleven days (p. 21) was made at appellants' request (Rec., 42), June 14, 1900.

Some of the points made against the complaint are made here for the first time, but a longer discussion would probably be profitless, as the so-called errors assigned are not assignable in an appeal in a *habeas corpus* case, the court having admittedly jurisdiction of the subject-matter and the parties, and to discuss the constitutionality of the act on extradition and of the Webster-Ashburnham treaty of 1842 is, I respectfully urge, frivolous.

Respectfully submitted.

Lynden Evans

Attorney for Appellee.